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# In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 657

PACIFIC FAR EAST LINE, INC., PETITIONER

*v.*

THE GOVERNMENT OF GUAM

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE GOVERNMENT OF GUAM IN OPPOSITION

### QUESTIONS PRESENTED

1. Whether the Government of Guam has standing as an *aggrieved party,* pursuant to the provisions of the Review Act of 1950, 5 U.S.C. 1031 *et seq.,* to maintain an action for review of a Federal Maritime Commission order approving general increases in the rates for the carriage of ocean freight between the United States and Guam.

2. Whether the court below exceeded the bounds of proper judicial review of an administrative determination by remanding to the Federal Maritime Commission the question of working capital allowable in the carrier's rate base with a mandate to supply the

findings of fact and conclusions of law based thereon which support the ultimate finding on this issue.

## STATUTES INVOLVED

In addition to the statutory provisions presented by petitioner (Pet. 2), respondent submits for the consideration of the Court, Section 10 of the Review Act of 1950, 64 Stat. 1132, 5 U.S.C. 1040. This provision is hereinafter set forth in the Appendix to this brief (Appendix, *infra*, p. 16).

## STATEMENT

The proceeding below was originally instituted by the Federal Maritime Board, the predecessor in jurisdiction to the present Federal Maritime Commission, under Section 18 of the Shipping Act, 1916 (39 Stat. 735, as amended, 46 U.S.C. 817), and Section 3 of the Intercoastal Shipping Act, 1933 (47 Stat. 1426, as amended, 46 U.S.C. 845), as an investigation of the justness and reasonableness of successive general increases in freight rates over the previously effective rates of Pacific Far East Line, Inc. ("PFEL"), for ocean transportation of cargo between ports of the United States and Guam.

The Commission in its Report dated October 23, 1962, found these rate increases to be just and reasonable, and ordered the investigation discontinued. The Government of Guam thereupon petitioned the United States Court of Appeals for the District of Columbia Circuit for a review of the Commission's Order and Report. Thereafter, on January 23, 1964, that Court delivered its decision in Appeal No. 17488, *Government of Guam* v. *Federal Maritime Commission*, 329

F. 2d 251, affirming in part and remanding in part the Report of the Commission. In its decision, the court directed the Commission (1) to make further findings and conclusions regarding the allocation of administrative and general expenses between the carrier's two services and (2) to make findings and state conclusions supporting its ultimate determination of the working capital allowed in the rate base of PFEL.

On these issues the court observed that it was unable to discharge its judicial duty of review because of the failure of the Commission to make necessary findings.

In response to this mandate, the Commission issued its Notice of Reopening of Proceedings in Docket No. 901, and on June 10, 1964, heard oral arguments and received briefs on the two issues remanded by the court below. On June 8, 1965, the Federal Maritime Commission issued its Order and Report on Remand, which affirmed its prior decision and discontinued the proceedings.

The Government of Guam again petitioned the court below to review the Commission's Order and Report on Remand. By a decision rendered July 11, 1966, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's findings regarding the allocation of administrative and general expense, but again remanded to the Commission the issue of working capital properly allowable in the carrier's rate base. The Court found that the Commission's Report on Remand—like its original Report—failed to include findings of fact which would justify the conclusions necessary to support the Commission's ultimate decision of the question.

It is this decision of July 11, 1966, to which the petition for a writ of certiorari is directed. Neither the United States nor the Federal Maritime Commission has petitioned for certiorari.

## REASONS FOR DENYING THE WRIT

### 1. THERE IS NO "CONFLICT" BETWEEN THE JUDICIAL CIRCUITS REGARDING THE MEASUREMENT OF WORKING CAPITAL ALLOWABLE IN A CARRIER'S RATE BASE FOR USE IN THE RATE OF RETURN DETERMINATION

Contrary to petitioner's contention, an objective reading of *Alaska Steamship Co.* v. *Federal Maritime Commission,* 344 F. 2d 810 (C.A. 9) (Pet. 44a), and the decision of the court below, *Government of Guam* v. *Federal Maritime Commission,* 365 F. 2d 515 (Pet. 33a), reveals neither conflict nor disagreement, but relative accord.

To relate the two decisions to the instant controversy, reference must be made to the opinion of the court below in its *first* judicial review of these proceedings, *Government of Guam* v. *Federal Maritime Commission,* 329 F. 2d 251 (Pet. 15a).

In that first review, the court below held that the selection of the methods and formulas for the computation of factors essential to rate making is for the administrative tribunal and not for the court; but the court clearly noted:

> However there is a judicial duty of review in these matters, and it is equally well established that the reviewing authority is entitled to know—indeed must know—the basic data and the whys and wherefores of the Commission's conclusions. [*Id.* at 255; Pet. 21a, 22a.]

Specifically, regarding the issue of working capital, the court below there pointed out that such an allowance in the rate base is not a doctrinaire entry, but *must be a realistic allowance both in respect to need and amount for the carrier and trade in question.* The court's remand to the Commission regarding the guidelines to be followed in the determination of this issue was set forth in clear and unambiguous language:

> For what purposes did *this* company need working capital, and how much did it need for those purposes?
>
> * * * * *
>
> We cannot tell from the data before us whether the amount thus included was or was not within the discretionary power of the Commission. The case must therefore be remanded in order that the Commission may make the findings and state the conclusions which resulted in the ultimate conclusion it reached on this point. [*Id.* at 257; Pet. 25a.]

The Ninth Circuit decision in *Alaska Steamship Co.* v. *Federal Maritime Commission, supra,* which petitioner relies upon as being "in conflict" with the opinion of the court below, was handed down during the period between the first and second judicial review of these proceedings by the court below.

The cited decision of the Ninth Circuit, so far as the issue of working capital is concerned, is not only in accord with the two decisions of the court below in the instant controversy, but, in addition, utilizes the opinion of the court below on the first review of these

proceedings as authority in its extended discussion of working capital.

In discussing the Commission's utilization there of the average round voyage expense formula for the calculation of working capital which is contended for by petitioner here, the Ninth Circuit recognized the basic rule that *the propriety of the application of that formula must necessarily depend on the facts pertaining to the particular carrier and trade under investigation.*

> However, the sum total of the voyage expense of one round trip for each vessel engaged in a particular steamship operation is not necessarily a fair gauge of the carrier's working capital needs in that operation. This was made clear in *Government of Guam* v. *Federal Maritime Commission*, 117 U.S. App. D.C. 296, 329 F. 2d 251, 256–257, where working capital, so derived, amounted to forty-seven percent of the total rate base. * * * [*Alaska Steamship Co.* v. *Federal Maritime Commission, supra*, 344 F. 2d at 824; Pet. 67a.]

In the light of this language, there can be no doubt that the Ninth Circuit recognized that the calculation of working capital pursuant to the questioned formula is not a matter of administrative expertise divorced from a factual record showing it to be appropriate in need and amount for the particular trade and carrier whose tariff rates are under investigation. The vice of petitioner's position is that it believes a formula "in the air," unsupported by facts of record, is enough.

Although the Commission had made no specific findings or conclusions regarding the appropriateness of

the application of the average round voyage expense formula to the Alaskan trade, the Ninth Circuit concluded that the Commission's use of the formula might stand in view of previous Commission decisions in which the same formula was applied to that very trade ["including the 1963 case involving the overall operations of Alaska Steam. General Increases in Alaskan Rates and Charges, 7 F.M.C. 563, at 582 (1963)"]. (*Id.* at 825, Pet. 68a.)

The court simply gave weight to the Commission's prior determination on the record of an investigation of freight rates of the same carrier in the same trade, that the calculation of working capital pursuant to the average round voyage expense formula was reasonable and appropriate *for that carrier and that trade.* In the instant controversy, there has been *no* prior determination by the Commission of the working capital necessary for Pacific Far East Line's operations in the domestic offshore Guam trade.

In the *Alaska Steamship* case, the Ninth Circuit concluded its discussion of working capital by stating that *absent a more direct and specific factual attack upon the adequacy of the working capital figure allowed by the Commission, it would uphold this calculation.* The Government of Guam in the proceedings below has made just such a direct and specific factual attack upon the propriety of the application of this formula to the Guam trade. As stated by the court below:

> We do not mean to hold that the Commission must make detailed factual findings in respect to every item involved in any of the many

> complicated transactions which it must consider in the performance of its duties; but, when a factual item is seriously disputed, and especially in the event of a remand from a reviewing court, findings in sufficient detail to support the ultimate conclusion of the agency against the attack must be made by the agency. [*Government of Guam* v. *Federal Maritime Commission, supra,* 365 F. 2d at 520; Pet. 41a.]

Respondent submits that no "conflict" exists between the decision of the court below and the decision of the Ninth Circuit.

2. THE COURT BELOW DID NOT INVADE THE COMMISSION'S DOMAIN OF ADMINISTRATIVE EXPERTISE, BUT SIMPLY REQUIRED THE FACTS ON WHICH SUCH EXPERTISE WAS APPLIED TO BE STATED IN SUPPORTABLE FINDINGS

The petitioner suggests that the court below through "a barely disguised expression of disagreement with the findings of the Commission, based upon substantial evidence" has substituted its judgment for that of the agency "on matters within the area of administrative expertise" (Pet. 9, 11).

Here, as in *Burlington Truck Lines* v. *United States,* 371 U.S. 156:

> There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion. We are not prepared to and the Administrative Procedure Act[16] will not permit us to accept such adjudicatory practice. See *Siegel Co.* v. *Federal Trade Comm'n,* 327 U.S. 608, 613, 614. Expert discretion is the lifeblood of the administrative process, but "unless we make the requirements for admin-

istrative action strict and demanding, *expertise,* the strength of modern government, can become a monster which rules with no practical limits on its discretion." *New York* v. *United States,* 342 U.S. 882, 884 (dissenting opinion). "Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body." *Federal Communications Comm'n* v. *RCA Communications, Inc.,* 346 U.S. 86, 90. The Commission must exercise its discretion under § 207(a) within the bounds expressed by the standard of "public convenience and necessity." Compare *id.,* at 91. And for the courts to determine whether the agency *has* done so, it must "disclose the basis of its order" and "give clear indication that it has exercised the discretion with which Congress has empowered it." *Phelps Dodge Corp.* v. *Labor Board,* 313 U.S. 177, 197. The agency must make findings that support its decision, and those findings must be supported by substantial evidence. *Interstate Commerce Comm'n* v. *J-T Transport Co.,* 368 U.S. 81, 93; *United States* v. *Carolina Carriers Corp.,* 315 U.S. 475, 488-489; *United States* v. *Chicago, M., St. P. & P. R. Co.,* 294 U.S. 499, 511. * * * [371 U.S. at 167-168].

[15] Section 8(b), 5 U.S.C. § 1007(b), provides that all decisions shall "include a statement of * * * findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record."

The court below was not only justified in commenting, but was *required* to comment on the generalized rationalizations proffered by the commission on remand in response to the court's mandate to supply

the underlying findings of fact and conclusions which, in turn, supported its determination of the question remanded. Such judicial comment cannot in any manner be construed as a substitution of judgment by the reviewing Court.[1]

### 3. THE GOVERNMENT OF GUAM HAS STANDING TO SECURE JUDICIAL REVIEW OF THE COMMISSION'S DETERMINATION BOTH IN GUAM'S CAPACITY AS *PARENS PATRIAE* AND HER PROPRIETARY CAPACITY[2]

Petitioner states that Guam claims "no proprietary interest as a user of ocean transportation or otherwise" (Pet. 3) and contends that Guam lacks standing as *parens patriae* to seek judicial review of a Federal Maritime Commission order emanating from an investigatory proceeding under Section 18 of the Shipping Act, 1916, and Section 3 of the Intercoastal Shipping Act, 1933.

Petitioner misconceives Guam's capacity in these proceedings. Without question, the Government of

---

[1] The Commission has now acknowledged that there is no substantial evidence of record to support its findings. On October 25, 1966, it ordered the case reopened, stating in part: "A review of the record in this proceeding reveals that the findings which the Court of Appeals has required the Commission to make cannot be made on the basis of the present record." Federal Maritime Commission, Docket No. 901, *General Increases in Rates—Pacific-Atlantic/Guam Trade*, Order, October 25, 1966 (Appendix, *infra*, p. 21).

[2] There is a question whether this issue is timely presented by the petition for certiorari, filed more than ninety days after its resolution by the judgment entered on the first review proceedings in the case. See 329 F. 2d 251, 252–253. Cf. *Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U.S. 206, 212–213; *Federal Power Commision* v. *Idaho Power Co.*, 344 U.S. 17, 20.

Guam maintains its position in these procedings as *parens patriae* to the peoples of Guam; but contrary to petitioner's assertion, it is also a matter of record that the Government of Guam intervened in and sought review of these proceedings not only on behalf of the peoples of Guam, but to protect its own proprietary interest both as a shipper and consignee of ocean freight subject to the rates under investigation.

On September 7, 1960, the Government of Guam petitioned the Federal Maritime Board for leave to intervene in these proceedings. The petition to the Federal Maritime Board stated, *inter alia,* that the Government of Guam "has a *property, financial, and civil* interest in the proceeding * * *" (emphasis added; Appendix, *infra,* p. 18).

On December 19, 1962, the Government of Guam petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the Order and Report of the Federal Maritime Commission in this investigation. This petition stated, *inter alia,* "the lawfulness of freight rates and charges is of vital concern to the *Government and people of Guam,* the economics of *whose* very existence is predicated on this ocean freight supply line to the United States" (emphasis added; Appendix, *infra,* p. 20).

Thus, the Government of Guam sought intervention and review both under its capacity of *parens patriae* of the peoples of Guam and in its *proprietary capacity* as a shipper and consignee of ocean freight.

The question of Guam's standing to seek judicial relief in either of the above capacities was put to rest by this Court in *Georgia* v. *Pennsylvania R.,* 324 U.S.

439. In this decision, this Court upheld the standing of the State of Georgia to seek judicial relief both in its proprietary capacity and in its capacity as *parens patriae* to the citizens of Georgia. This decision squarely held that a State may invoke the rights conferred by federal statutes (antitrust laws) in either of the above capacities. Regarding Georgia's judicial right to proceed under this Federal statute to protect the interest of the citizens of that State, this Court stated (p. 451):

> Georgia as a representative of the public is complaining of a wrong which, if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate. If we denied Georgia as *parens patriae* the right to invoke the original jurisdiction of the Court in a matter of that gravity, we would whittle the concept of justiciability down to the stature of minor or conventional controversies. There is no warrant for such a restriction.

In that case, this Court clearly distinguished the doctrine laid down in *Massachusetts* v. *Mellon,* 262 U.S. 447, and *Florida* v. *Mellon,* 273 U.S. 12, the cases upon which petitioner bases his attack on Guam's standing in the following language (324 U.S. at 445):

> It is said that the bill does not set forth a justiciable controversy within the rule of *Massachusetts* v. *Mellon,* 262 US 447, and

> *Florida* v. *Mellon*, 273 US 12. We take the other view, for we are of the opinion that Georgia as *parens patriae* and as proprietor of various institutions asserts a claim within judicial cognizance. The complaint of Georgia in those respects is not of a political or governmental character. There is involved no question of distribution of powers between the State and the national government as in *Massachusetts* v. *Mellon* and in *Florida* v. *Mellon*, *supra*. * * *

The principle established by this Court in *Georgia* v. *Pennsylvania R.*, *supra*, was followed by a three-judge federal court in *State of New York* v. *United States*, 65 F. Supp. 856 (N.D.N.Y.), affirmed, 331 U.S. 284. In the language of that court (65 F. Supp. at 872):

> First, there should be a brief allusion to the contention that the plaintiff States have no standing to sue as parens patriae but only as shippers and receivers of freight. This point has become more or less academic since there are states who are parties plaintiff who plainly may sue as freight shippers and consignees directly affected by the order. But all the States who are parties are political entities which are also regions or districts within the rate-making territories involved and they are directly affected as such and have an interest in behalf of their citizens and communities above and apart from the rights of any particular shipper or receiver of freight to a continuance of existing rates or the maintenance of others. This we think distinguishes such cases as *Oklahoma* v. *Atchison, T. & S.F.R.*, 220 U.S. 277,

286, 31 S. Ct. 434, 55 L. Ed. 465; *Sprunt & Son, Inc.* v. *United States,* 281 U.S. 249, 50 S. Ct. 315, 74 L. Ed. 832; and *Alabama Power Co.* v. *Ickes,* 302 U.S. 464, 58 S. Ct. 300, 82 L. Ed. 374, and *gives these States standing to sue as parens patriae to preserve or enhance the welfare of their citizens by securing to them the proper administration of federal laws under the principles applied in Georgia* v. *Pennsylvania R.,* 324 U.S. 439, 446-52, 65 S. Ct. 716, 89 L. Ed. 1051. [Emphasis added.]

Plainly, Guam as intervenor was a principal party in the proceedings before the Commission. Without doubt, as such party Guam is "aggrieved" by the Commission's Report on Remand. Nothing more was required by the Congress in creating the right to appellate review, the remedy which Guam invoked to be heard by the court below. Sec. 4, Review Act of 1950, 5 U.S.C. 1034 (Pet. 3a).

## CONCLUSION

**For the foregoing reasons, the within petition for a writ of certiorari should be denied.**

**Respectfully submitted.**

**HAROLD W. BURNETT,**
***Attorney General,***
***Territory of Guam.***

**EUGENE L. STEWART,**
**DONALD O. LINCOLN,**
**THOMAS L. DELANEY,**
***Attorneys for Respondent.***

***Of Counsel:***
**LINCOLN & STEWART.**

**The Solicitor General authorizes the filing of the foregoing brief.**

**THURGOOD MARSHALL,**
***Solicitor General.***

**DECEMBER 1966.**

# APPENDIX

## Pertinent Provisions of the Review Act of 1950, 64 Stat. 1129, 1132, 5 U.S.C. 1040

Sec. 10. *Review in Supreme Court on certiorari or certification.* An order granting or denying an interlocutory injunction under section 1039(b) of this title shall be subject to review by the Supreme Court of the United States upon writ of certiorari as provided in section 1254(1) of Title 28: *Provided,* That application therefor be duly made within forty-five days after the entry of such order. The final judgment of the court of appeals in a proceeding to review under this chapter shall be subject to review by the Supreme Court of the United States upon a writ of certiorari in accordance with the provisions of section 1254(1) of Title 28: *Provided further,* That application therefor be duly made within ninety days after the entry of such judgment. Either the United States or the agency or an aggrieved party may file such petition for a writ of certiorari. The provisions of section 1254(3) of Title 28, regarding certification, and of section 2101(e) of Title 28, regarding stays, shall also apply to proceedings under this chapter.

(Served, September 20, 1960, Federal Maritime Board)

FEDERAL MARITIME BOARD

September 19, 1960

No. 901

GENERAL INCREASES IN RATES, PACIFIC-ATLANTIC GUAM TRADE

*RULING ON PETITION TO INTERVENE*

A petition to intervene herein having been filed by the Government of Guam, and good cause appearing, said petition is hereby granted.

Interveners are reminded that documents filed in this proceeding, such as motions, petitions, etc., must be served upon all parties of record, a list of whom are on file in the Board's Office of Hearing Examiners, Washington, D.C.

(S) C. B. GRAY.

PETITION OF THE GOVERNMENT OF GUAM FOR LEAVE TO INTERVENE

Comes now your Petitioner, the Government of Guam (hereinafter referred to as Petitioner), pursuant to Rule 5(n) of the Federal Maritime Board's Rules of Practice and Procedure and respectfully petitions the Federal Maritime Board (hereinafter referred to as Board) for Leave to Intervene in the above-captioned proceeding, and in support thereof represents and alleges as follows:

I

That the Government of Guam is the duly authorized agency responsible under the direction of the Secretary of the Interior for the administration of the affairs of the Island of Guam; and as such has a property, financial, and civil interest in the proceeding which will not be adequately represented by any other party to the proceeding.

II

That the subject matter in this proceeding involves, among other things, an investigation into the lawfulness of increased freight rates of the Carriers providing service in the Pacific-Atlantic/Guam trade route.

III

That the Government of Guam is vitally interested in trade between U.S. Pacific and Atlantic ports, on the one hand, and Guam, on the other hand; and the rates, fares, charges, rules and regulations of the Carriers have a direct bearing on the development of commerce between Guam and these United States ports.

IV

That Guam is vitally dependent to a great extent on adequate waterborne transportation services at just and reasonable rates and charges in order to provide for its existing population and commerce and to meet the reasonable needs of an expanding population and the continuing expansion in commerce.

V

That the participation of your Petitioner in this proceeding will assist the Board in the development

of a sound and adequate record and will not unduly broaden the issues nor delay this proceeding.

WHEREFORE, the Government of Guam respectfully requests leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at oral argument, if oral argument is granted.

Respectfully submitted.

GOVERNMENT OF GUAM

By (S) EUGENE L. STEWART,
*Co-Counsel.*

Dated at Washington, D.C., this 7th day of September 1960.

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PETITION FOR REVIEW OF ORDER OF THE FEDERAL MARITIME COMMISSION

To the Honorable, the JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

The Government of Guam, pursuant to the Review Act of 1950 (5 U.S.C. § 1031, *et seq.*) and Rule 38(a) of the General Rules of the United States Court of Appeals for the District of Columbia Circuit, hereby petitions this Court for review of the Order and Report of the Federal Maritime Commission, dated October 23, 1962, in the proceeding, *General Increases in Rates—Pacific-Atlantic/Guam Trade,* Docket No. 901. A copy of the Order and Report is attached to this Petition.

*I. Nature of the Proceedings*

This proceedings was an investigation under Section 18 of the Shipping Act, 1916, 46 U.S.C. § 817, and Section 3 of the Intercoastal Shipping Act, 1933,

46 U.S.C. § 845, of the justness and reasonableness of successive general increases in freight rates between ports of the United States and Guam of 10 per cent and 20 per cent published by Pacific Far East Line (PFEL) in its tariffs PFEL Guam Tariff No. 2 (F.M.B.-F. No. 2) and PFEL Tariff No. 3 (F.M.B.-F. No. 3), and by American President Lines (APL) in its tariffs APL Pacific-Guam Tariff No. 5 (F.M.B.-F. No. 9), APL Atlantic Guam Tariff No. 3 (F.M.B.-F. No. 8), APL Pacific Guam Tariff No. 6 (F.M.B.-F. No. 11), and APL Atlantic-Guam Tariff No. 4 (F.M.B.-F. No. 10), which, after the maximum suspension permitted by law, became effective on April 30, 1960, and January 27, 1961, respectively.

The Report of the Commission found the rate increases to be just and reasonable, and its Order discontinued the investigation.

PFEL and APL are the only ocean transportation carriers providing freight service between ports in the United States and Guam. Guam is the most distant U.S. territory, being farther from the United States than Japan. The lawfulness of freight rates and charges is of vital concern to the Government and people of Guam, the economics of whose very existence is predicated on the ocean freight supply line to the United States.

The Government of Guam is aggrieved by the Commission's Order and Report finding the increased freight rates to be lawful.

*II. Venue*

The venue is in this Court pursuant to the provisions of 5 U.S.C. § 1033.

* * * * *

*IV. Relief Requested*

The Government of Guam requests this Court to review the Federal Maritime Commission's Order and Report of October 23, 1962; to set it aside; to remand this proceeding to the Federal Maritime Commission for the entry of an Order consistent with this Court's findings; and for such other and further relief as this Court may deem reasonable and proper.

Respectfully submitted,

GOVERNMENT OF GUAM
By (s) EUGENE L. STEWART
*Its Attorney*
*Hume & Stewart*

December 19, 1962.
[Certificate of Service].

---

(Served, October 25, 1966, Federal Maritime Commission)

FEDERAL MARITIME COMMISSION

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Docket No. 901

GENERAL INCREASES IN RATES—PACIFIC-ATLANTIC/GUAM TRADE

---

*ORDER*

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On July 11, 1966 the U.S. Court of Appeals for the District of Columbia Circuit remanded this proceeding for a second time to the Commission. In the first review proceeding, the Commission's Report and Order were affirmed in all respects with the exception of the Commission's disposition of working capital and administrative and general expense. In a Report on

Remand served on June 8, 1965, the Commission reaffirmed its previous allocations of working capital and administrative and general expense, having received additional briefs and heard oral argument. In its most recent opinion, the Court of Appeals found the treatment of the administrative and general expense item satisfactory, but it again remanded the working capital issue for supporting findings to justify the inclusion of an amount based on the Commission's formula in the rate base of Pacific Far East Line, the dominant carrier in the Guam trade.

A review of the record in this proceeding reveals that the findings which the Court of Appeals has required the Commission to make cannot be made on the basis of the present record. Therefore, additional evidence must be received. A hearing has been scheduled for November 30, 1966 in Docket Nos. 66–13 and 66–18, proceedings which involve rates in the Guam trade. Inasmuch as the parties in those consolidated proceedings and in Docket No. 901 are the same and the issue of working capital must also be determined in the new proceedings, the Commission is of the opinion that the issue of working capital in Docket No. 901 should be set down for hearing and determined at the same time as in Docket Nos. 66–13 and 66–18.

THEREFORE, IT IS ORDERED, That the issue of determination of working capital in Docket No. 901, pursuant to the instructions of the U.S. Court of Appeals for the District of Columbia Circuit in No. 19,574, be set down for hearing and consolidated with the proceedings in Docket Nos. 66–13 and 66–18.

By the Commission.

[SEAL] THOMAS LISI, *Secretary.*

U.S. GOVERNMENT PRINTING OFFICE: 1966